**IN THE UNITED STATES DISTRICT COURT**
**FOR THE DISTRICT OF DELAWARE**

| | | |
|---|---|---|
| | § | |
| **OPENPRINT LLC,** | § | |
| **Plaintiff,** | § | **Civil Case No. 17-1075-GMS** |
| | § | |
| **v.** | § | |
| | § | |
| **OKI DATA AMERICAS, INC.,** | § | **JURY TRIAL DEMANDED** |
| | § | |
| **Defendant.** | § | |
| | § | |

## NOTICE OF SUBSEQUENT CONTROLLING AUTHORITY

Pursuant to D. Del. LR 7.1.2(b), Plaintiff OpenPrint LLC provides this notice of

subsequent authority relating to Defendants' Motion to Dismiss Plaintiff's Complaint (D.I. 6).

Attached hereto as Exhibit A is a recent decision by the Federal Circuit in *Aatrix Software, Inc.*

*v. Green Shades Software, Inc.*, No. 2017-1452 (Fed. Cir. Feb. 14, 2018), vacating a district

court's grant of a Motion to Dismiss that certain claims were ineligible under 35 U.S.C. § 101

because "[t]he district court granted this Rule 12(b)(6) Motion without claim construction." *Id.*

At 6. This decision is particularly relevant because it emphasizes that unresolved questions of

fact as to such issues as claim construction at Alice step one, and- separately, at Alice step two,

may preclude dismissal under 35 U.S.C. § 101 at the pleading stage. *See* Ex. A.

Dated: February 20, 2018

Respectfully submitted,

*/s/Timothy Devlin*
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## **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that all counsel of record who are deemed to have

consented to electronic service are being served with a copy of this document via the Court's

CM/ECF system per Local Rule CV-5 on February 20, 2018.

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*/s/ Timothy Devlin*
Timothy Devlin

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